IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY FIFTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NO : 18435 of 1998

Between:

A.Sitaram S/o Balappa
R/o Hyderabad

..... PETITIONER

AND

1 Municipal Corporation of Hyderabad Rep. by Commissioner and Special Officer, Hyderabad.
2 Dy. Commisssioner, Municipal Corporation of Hyderabad,
Circle No. 3, Abids ,
Hyderabad

(Amended as per orders of the Hon'ble Court dt 2-7-98)

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a WRIT OF MANDAMUS or any other appropriate WRIT,ORDER OR DIRECTION declaring the action of the respondents and its officers in asking the petitioners to remove the bunk located adjacent to Sivani hotel (presently Lakshmi hotel) opposite: to pardesi General stores , Hyderguda main road , Hyderabad as illegal, and arbitrary and also highhanded and for a consequential direction directing the respondents not to remove the petitioner's bunk.

Counsel for the Petitioner: MR.M.LAKSHMANA SARMA

Counsel for the Respondents: MR.GANTA RAMA RAO SC FOR MCH

The Court made the following :

ORDER:

This writ petition is filed seeking to declare the action of the respondents in asking the petitioner to remove the bunk (buddy shop) located adjacent to Sivani hotel (presently Lakshmi hotel), opposite to Pardesi General Stores, Hyderguda main road, Hyderabad, as illegal, arbitrary and highhanded, and consequently to direct the respondents or their officials not to remove the said bunk which belongs to Leather Industry Development Corporation.

The petitioner claims to be running the bunk in question and doing foot-wear repairing work in the said bunk with the permission granted by the Municipal Corporation of Hyderabad, vide its order dated 17-02-1993. He states that some of the shops on Hyderguda main road near old M.L.A. quarters were demolished in the road-widening scheme. His grievance is that the respondents, without giving him a prior notice, are trying to remove the bunk, which is illegal and violative of the principles of natural justice. Hence, the writ petition.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the Municipal Corporation of Hyderabad.

The petitioner admittedly is an encroacher of the road margin. Though he claims that he is paying encroachment fee to the Municipal Corporation of Hyderabad, that by itself does not vest in him any right to continue to squat on the encroached road margin, and more so, when the road margin encroached by the petitioner, it is stated is causing inconvenience to the free flow of vehicular traffic. Having regard to the fact that the Municipal Corporation with a view to ease the vehicular movement, had taken steps to widen the road margins, and in that direction, had taken steps to remove the encroachments existing on the road margins, running along the Hyderguda main road, the petitioner, who admittedly is running a foot-wear repairing shop on the encroached road margin, cannot have any grievance against the road widening and his removal from the road margin, and more so, such widening is for the benefit and convenience of the general public.

Insofar as the contention of the petitioner that no notice whatsoever was issued by the respondents before seeking to remove him from the premises in question is concerned, it is required to notice that under Section 405 of the Hyderabad Municipal Corporation Act, 1955 the Commissioner is empowered to evict encroachments even without issuing notice. Admittedly, the encroachment made by the petitioner is on a strategic location, and if the said encroachment is not cleared immediately, it would cause undue hardship and inconvenience not only to the free flow of vehicular traffic, but to the public in general, and to the pedestrians and passersby in particular. Be that as it may, in ***Mohd. Miskinavelli and others v. Visakhapatnam Municipal Corporation*** when an argument was advanced that before seeking to remove the encroachment, notice was required to be issued to the encroacher, a learned single Judge of this Court, while repelling the said contention, held that th e Commissioner has power under Section 405 of the Hyderabad Municipal Corporation Act, 1955 to evict encroachments even without issuing notice. In that view of the matter, no exception can be taken to the action of the respondents in not issuing notice to the petitioner before removing him from the encroached road margin.

In the result, the writ petition is devoid of merit, and the same is accordingly dismissed. No costs.

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N.V. RAMANA, J

Date: 25-3-2005

Svv

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Commissioner and Special Officer, Municipal Corporation of Hyderabad, Hyderabad.
2 Dy. Commisssioner, Municipal Corporation of Hyderabad,
Circle No. 3, Abids , Hyderabad

3 Two CD copies

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